
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,
Plaintiff,

v.

STEPHEN PLATO McRAE,
Defendant.

MEMORANDUM DECISION AND
ORDER DISMISSING WITHOUT
PREJUDICE MOTION TO EXTEND TIME

Case No. 2:16-CR-566 TS

District Judge Ted Stewart

This matter is before the Court on Defendant’s Motion for Extension of Time. Defendant seeks additional time to file a motion under 28 U.S.C. § 2255. For the reasons discussed below, the Court will dismiss the Motion without prejudice.

Generally, a motion under § 2255 must be filed within 1 year of a defendant’s conviction becoming final.¹ Here, judgment was entered on August 7, 2019. Defendant did not file a direct appeal, making his judgment final on August 21, 2019. Defendant seeks additional time to file his § 2255 motion.

The Court lacks the authority to extend the time limit set out in § 2255(f)(1).² That limitation, however, is subject to equitable tolling. But “the question of equitable tolling is ripe for adjudication only when a § 2255 motion has actually been filed and the statute of limitations

¹ 28 U.S.C. § 2255(f)(1).

² See *Washington v. United States*, 221 F.3d 1354, at *1–2 (10th Cir. 2000) (unpublished table decision).

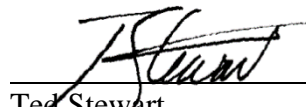
has been raised by the respondent or the court sua sponte.”³ Since Defendant has not filed his § 2255 motion, any ruling on equitable tolling would be premature. Once Defendant files a motion under § 2255, he may argue that the limitations period should be equitably tolled.

It is therefore

ORDERED that Defendant’s Motion for Extension of Time (Docket No. 192) is
DISMISSED WITHOUT PREJUDICE.

DATED this 28th day of August, 2020.

BY THE COURT:



Ted Stewart
United States District Judge

³ *United States v. Daniels*, 191 F. App’x 622, 622 (10th Cir. 2006) (quoting *United States v. Verners*, 15 F. App’x 657, 660 (10th Cir. 2001)).